

Internal Revenue Service, Treasury

§ 1.904(b)-3

Step (6) Computation of foreign tax credit limitation fraction.

(i) Taxable income from sources without the United States is as follows:

Foreign income (exclusive of capital gains and losses)+Foreign source capital gain net income - 0.60 (foreign source net capital gain) - (paragraph (a)(3)(i) adjustment - paragraph (a)(3)(ii) adjustment)

$$\$2,000,000 + 0 - 0 - \$700,000 + 0.60 (\$600,000) (\$360,000) = \$1,660,000$$

(ii) The entire taxable income is as follows:

Taxable income (exclusive of capital gains and losses)+Capital gains net income - 0.60(net capital gain)

$$\$5,000,000 + \$100,000 - \$60,000 = \$5,040,000$$

Note that no adjustment under paragraph (a)(3) of this section is made with respect to the denominator.

[T.D. 7914, 48 FR 44523, Sept. 29, 1983]

§ 1.904(b)-3 Sale of personal property.

(a) *General rule.* For purposes of section 904 and the regulations thereunder, there shall be included as gain from sources within the United States any gain from sources without the United States arising from the sale or exchange of a capital asset which is personal property (as defined in §1.1245-3(b)). For purposes of this paragraph, gain from the sale or exchange of a capital asset shall include net section 1231 gain, but shall not include gain from the sale or exchange of a capital asset which is not treated as capital gain. However, gains and losses which are not from the sale or exchange of capital assets but which are treated as capital gains and losses under the Internal Revenue Code are included. The special source rules provided under this section shall be applied on an item by item basis with respect to the sale of personal property within any taxable year, except that if substantially all the assets of a trade or business (within the meaning of section 368(a)(1)(C)) are sold within any one country within any taxable year, the gains and losses from such sales of such assets shall be netted before applying the source rules under this section.

(b) *Special rules.* Paragraph (a) of this section shall not apply in each of the following cases:

(1) In the case of an individual, if the property is sold or exchanged within

the country or possession of the individual's residence.

(2) In the case of a corporation if the property is stock in a second corporation, and is sold in a country or possession in which the second corporation derived more than 50 percent of its gross income for the 3-year period ending with the close of such second corporation's taxable year immediately preceding the year during which the sale or exchange occurred (or for such part of such period as the corporation has been in existence, but in no event less than a 12-month period). For purposes of this paragraph (b)(2) of this section the gross income of any foreign corporation shall be computed in the same manner as if the foreign corporation were a domestic corporation. Thus, the gross income of a foreign corporation for this purpose includes income from all sources, which is not specifically excluded from gross income under any other provisions of the Code.

(3) In the case of any taxpayer, if the property is personal property (other than stock in a corporation) which is sold or exchanged in a country or possession in which the property is used in a trade or business of the taxpayer, or in which the taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred (or, in case of a taxpayer other than an individual, for such part of such period as the taxpayer has been in existence, but in no event less than a 12-month period). In the case of property sold or exchanged by a partnership, trust, or estate, the determination required by the preceding sentence shall be made at the level of the partnership, trust (other than a grantor trust), or estate. For purposes of this paragraph (b)(3) of this

section, the gross income of any foreign corporation (or other entity) shall be computed in the same manner as if the foreign corporation were a domestic corporation (or a domestic entity).

(c) *Exception.* Paragraph (a) of this section shall not apply to a sale of personal property if the gain (determined under chapter 1 of the Internal Revenue Code and computed on an item by item basis as provided under paragraph (a) of this section) from the sale or exchange of the personal property is subject to an income, war profits, or excess profits tax (including a tax withheld with respect to nonresident aliens or foreign corporations) with respect to a foreign country or a possession of the United States in which the sale or exchange occurs, and the rate of tax imposed by such country or possession applicable to such gain is 10 percent or more. For purposes of this paragraph, the tax must be 10 percent or more of the total amount of gain (whether ordinary or capital) arising from the sale or exchange of the item of personal property.

(d) *Application of source rules.* In determining the foreign country or possession where property is sold or exchanged for purposes of paragraphs (b) and (c) of this section, and the foreign country or possession where gross income is derived for purposes of paragraphs (b)(2), (3) and (e) of this section, the source of any gain or income shall be determined by applying the principles under sections 861, 862, and 863 and the regulations thereunder.

(e) *Gain from liquidation of certain foreign corporations.* Paragraph (a) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies, if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred (or for such part of such period as the corporation has been in existence, but in no event less than a 12-month period). For purposes of paragraph (e) of this section, the gross income of the foreign corporation shall be computed in the

same manner as if the foreign corporation were a domestic corporation.

(f) *Residence defined.* For purposes of paragraph (b)(1) of this section, the country of an individual's residence is to be determined by applying the rules under §§ 301.7701(b)-1 through 301.7701(b)-9 of this chapter.

(g) *Tax rate applicable to gain.* For purposes of paragraph (c) of this section, the tax rate applicable to the gain on the sale or exchange of personal property (as determined under chapter 1 of the Internal Revenue Code 1954) shall be determined by applying the tax laws of the foreign country or possession (and any applicable reduction under a tax treaty) to such gain and by treating the gain from such transaction as if such gain were the only income derived by the taxpayer during the taxable year (and the only deductions allowed are deductions directly attributable to such gain).

(h) *Country in which gross income derived.* Notwithstanding paragraph (d) of this section, for purposes of this section, dividends received by a shareholder who is not a U.S. person from a foreign corporation shall be deemed to be derived from sources within the foreign country under the laws of which the foreign corporation is created or organized.

[T.D. 7914, 48 FR 44524, Sept. 29, 1983, as amended by T.D. 8411, 57 FR 15241, Apr. 27, 1992]

§ 1.904(b)-4 Effective date.

Sections 1.904(b)-(1) and 1.904(b)-2 shall apply to taxable years beginning after December 31, 1975 and § 1.904(b)-3 shall apply to sales and exchanges made after November 12, 1975.

[T.D. 7914, 48 FR 44525, Sept. 29, 1983]

§ 1.904(f)-1 Overall foreign loss and the overall foreign loss account.

(a) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. For taxable years ending after December 31, 1984, and beginning before January 1, 1987, there can be five types of overall foreign losses: a loss under each